No. 80-861

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1980

HAROLD E. BAGNALL, et al.,
Petitioners,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, et al.,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT AIR LINE PILOTS ASSOCIATION, INTERNATIONAL IN OPPOSITION

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STATEMENT OF THE CASE

Respondent Air Line Pilots Association ("ALPA") accepts Petitioners' statement of the case with the following modifications.

Petitioners have all chosen to remain nonmembers of ALPA and, accordingly, are required by the appli-

cable agreements to pay agency shop service charges as a condition of employment. In virtually identical federal court complaints, petitioners alleged that the imposition of dues and service charges on a percentage-of-income basis produces higher union payments for higher-earning employees and lower union payments for lower-earning employees. Such an arrangement, they contended, is "per se violative of Section 2, Eleventh, because such charges are not uniform . . . [and] burdens them with a disproportionate share of the costs of collective bargaining." (A. 10, 29).[1/]

Petitioners also asserted in their complaint that their service charges had been expended by ALPA, in part, for unidentified purposes "other than negotiating and administering collective bargaining agreements . . ." (A. 10, 29). Injunctive and other

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1/ References designated "A." are to the pages of the Appendix in the court of appeals.

relief was sought by reliance upon the doctrine of International Association of Machinists v. Street, 367 U.S. 740 (1961).[2/]

The district court concluded that the complaints failed to state a claim for which relief could be granted. As Judge Bryan stated in his oral opinion, a union's imposition of financial obligations by reference to a fixed percentage of earnings "treat[s] members and nonmembers uniformly" (Pet. 18a). With respect to the claim based upon Street, the district court found that the dispute was moot. After service of the instant complaints, in which petitioners had first protested about "political" expenditures, ALPA had paid or credited to their accounts specified amounts in satisfaction of any potential obligation,

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2/ In Street, supra, the Court concluded that the Congressional approval for compulsory union support arrangements provided by Section 2, Eleventh, contemplated only the sharing of the costs of collective bargaining and did not authorize compulsory support of union expenditures for "political activities", such as advancing political programs or supporting candidates for public office. Accordingly, Street held that employees are entitled to a proportional rebate of exacted funds if a union makes expenditures, over their objection, for "political" purposes not germane to collective bargaining.

and the petitioners did not dispute the propriety of the amounts paid (Pet. 20a-21a, 26a).[3/]

The court of appeals affirmed. Membership dues based upon a percentage of earnings do not lack the "uniformity" required by §2, Eleventh, the court of appeals held.

> "First, we note that the statute prescribes 'uniformity' and not 'equality'. In essence, plaintiffs are arguing that the cost of operating the union must be borne equally on a per capita basis. But this is not the law . . . Considering either his economic ability to pay or the benefits he realizes from effective representation, a pilot earning greater income has an advantage over a pilot earning less; there are reasons why he should or could pay more. There is uniformity in the basis of computing dues and there is lack of any indication of discrimination." (Pet. 5a).

The court of appeals also noted that there was no claim that ALPA had adopted the percentage formula for discriminatory purposes, and that its view of "uniformity" was supported by both agency and court decisions dealing with the uniformity test in §8(a)

3/ Hence, contrary to petitioners' assertion (Pet. 4), no court below found that ALPA spent any exacted funds for "political" purposes, and no such finding was required.

(3) of the National Labor Relations Act, 29 U.S.C. §158(a)(3).

With respect to petitioners' claim based upon Street, the court of appeals agreed that it was moot, because the parties had settled the dispute in the district court (Pet. 2a, n.1).

ARGUMENT

The decision of the court of appeals addressed by this petition is clearly correct, and there is no conflict of decisions or other basis warranting further review.

The terms, structure and legislative history of §2, Eleventh, all confirm the propriety of the court of appeals' determination that unions may impose dues based upon a percentage of employee earnings. When Congress enacted §2, Eleventh, in 1951, its purposes were "clearly revealed", Pennsylvania Railroad v. Rychlik, 352 U.S. 480, 489 (1957): to permit railroad and airline unions to require all represented employees -- whether union members or

or not -- to provide financial support for the work of collective bargaining. Rychlik, supra; Railway Employees Dept. v. Hanson, 351 U.S. 225, 231 (1956); International Ass'n of Machinists v. Street, 367 U.S. 740, 750-764 (1961). Apart from requiring unions to treat all represented employees alike -- a condition which ALPA's approach clearly satisfies -- Congress made no effort to regulate the manner by which unions might calculate dues.[4/]

Advocates of the 1951 amendment, the legislative history shows, repeatedly emphasized that their proposal was not aimed at interfering with any employees' job rights for any reason other than his refusal to pay the union's usual financial obligations. See, e.g., Hearings on H.R. 7789 before the

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4/ Indeed, even when Congress did later decide to regulate directly the relations between unions and their members, it did so in terms which, again, did not prohibit exactions based upon earnings. In the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401, et seq., Congress enacted the first federal regulation of internal union affairs but left unions free to impose assessments and dues, without limitation as to mode of calculation, so long as appropriate democratic procedures are employed. 29 U.S.C. §411.
Detroit Council of Painters No. 16 v. Painters Local 127, 415 F.2d 1121 (9th Cir. 1969), cert. den., 397 U.S. 972 (1970).

Committee on Interstate and Foreign Commerce, U.S. House of Representatives, 81st Congress, 2d Session, at pp. 11, 72-73, 77, 246-247; Senate Hearings on S.3295, 81st Congress, 2d Session, p. 23. When some legislators expressed concern that compulsory membership provisions might serve as a device to punish employees who disagreed with the union's policies or leadership, (House Hearings, pp. 19-20, 115, 142; Senate Hearings, pp. 167-169, 320) the original bill was revised to emphasize its limited nature: i.e., to compel mandatory financial support for the union's bargaining functions, but not to expose individual employees to reprisal because of union disfavor. House Hearings, pp. 246-247. The "uniformity" clause was part of this revision.[5/]

5/ As one informed commentator put it,

> "This limitation was intended to prevent a union from using control over its members' jobs for such purposes as punishing the exercise of free speech, engaging in political activities distasteful to the union, or testifying against the union." Cox, The Role of Law in Preserving Union Democracy, 72 Harv. L. Rev. 609, 624 (Feb. 1959).

The Senate Report further confirms that the uniformity provision was not intended to regulate the method by which dues are calculated, but only to protect employees against job loss when they have tendered the customary financial requirement. Senate Report No. 2262, 81st Cong., 2nd Sess., p. 2. Moreover, the legislative history shows that Congress was well aware that railroad unions, in 1951, often imposed financial support obligations in terms which did not produce identical bills for all employees. The union's chief spokesman in the Congressional hearings explicitly described the dues requirement set out in the constitution of his own international union: this requirement set only a minimum and allowed each local to set its own varying charges. House Hearings, p. 262. That was, indeed, the prevailing practice in the industry, as Congress well knew, since it received and reviewed all pertinent union constitutions during its deliberations. House Hearings, pp. 89-90, 115-116, 119; Senate Hearings, p. 35. No objection was raised to the practice.

Hence, when Congress enacted §2, Eleventh, it did so without a trace of a suggestion that the uniformity requirement would require all employees to pay identical amounts to the union; the uniformity requirement simply assures that employees will be subjected only to the union's normal requirements. As the court of appeals stated, ". . . the statute prescribes 'uniformity' and not 'equality.'" (Pet. 5a).[6/] No court has held otherwise.

Nor does the court of appeals' decision raise any novel or troublesome issues of federal labor policy. The imposition of dues based upon a percentage of income has no greater tendency than fixed

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6/ The Congressional choice of terminology is consistent with its intended objectives. In the realm of taxation, "uniformity" does not mean "identity". The fact that higher-earning taxpayers pay a larger amount of taxes does not destroy the uniformity of the federal income tax. Brushaber v. Union Pacific R.R., 240 U.S. 1, 24 (1916). Nor does the uniformity requirement of the U.S. Constitution prohibit levies which result in varying tax bills. Article I, Section 8 of the Constitution (" . . . Duties, Imposts and Excises shall be uniform throughout the United States.") places no obstacle in the way of progressive taxation. Knowlton v. Moore, 178 U.S. 41 (1900). And see Fernandez v. Wiener, 326 U.S. 340, 359 (1945).

amount dues to encourage or discourage union membership or activity. Under either dues approach, employees are equally free "to join unions, be good, bad, or indifferent members, or abstain from joining . . .", Radio Officers Union v. NLRB, 347 U.S. 17, 40 (1954), without altering their financial obligations to the union. Hence, the pertinent underlying federal policy, reflected in both the Railway Labor Act and the National Labor Relations Act -- i.e., "to insulate employees' jobs from their organization rights" (Id.) -- is fully preserved under either approach. 7/

Where unions have devised dues or fee schedules which might penalize employees for exercising statutory rights, or for disobeying union policy rules, the federal courts and the Labor Board have consistently

7/ As the court of appeals noted, its interpretation of §2, Eleventh, is confirmed by all of the relevant decisions in cases arising under the comparable provision of the National Labor Relations Act. Schwartz v. Associated Musicians, Local 802, 340 F.2d 228 (2d Cir. 1964); Stage Employees & Motion Picture Operators Union, 140 NLRB 759 (1963); Aluminum Workers Trade Council, 185 NLRB 69, 70 (1970).

intervened to determine whether the union has breached the separation between membership activity and employment rights.[8] But in the instant case, as the court of appeals observed, "there is no claim that ALPA adopted the percentage formula for discriminatory purposes" (Pet. 5a) and no explanation of how the formula could have any discriminatory effects.

Petitioners fail to identify any important question of federal law which has not been, but should be, settled by this Court. Thus, petitioners apparently concede the legality of a dues structure based on percentage of income, and complain here only about the fact that they, as nonmembers, are compelled to abide by its terms:

> "No one questions the right of ALPA to structure its dues in this fashion if the voluntary union members agree to do so. Rather, the first

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8/ NLRB v. Electric Auto-Lite Co., 196 F.2d 300 (6th Cir. 1952), cert. den., 344 U.S. 823; NLRB v. Leece-Neville Co., 330 F.2d 242 (6th Cir. 1964); Ferro Stamping & Mfg. Co., 93 NLRB 1459 (1951); Local 153, Int'l Union, 99 NLRB 1419 (1952); Food Machinery & Chemical Corp., 99 NLRB 1430 (1952); Brewery Workers, Local 102, 116 NLRB 178 (1956).

> question presented is whether section 2, Eleventh (a) permits a structure like that above to be imposed upon those who elect, as is their right, not to join and become a member . . ." (Pet. 5).

But this is hardly an unsettled issue.

In NLRB v. General Motors Corp., 373 U.S. 734 (1963), the Court squarely upheld the legality of the agency shop under §8(a)(3) of the NLRA and ruled that unions could compel nonmembers to pay "sums equal to the initiation fee and regular monthly dues paid by the union members."[9/] Here, as in General Motors, the employees enjoy the option of joining the union or refusing to join; and in both cases the refusal to join subjects them only to the requirement of paying the union a sum equal to the union's regular fees and dues required of members. Thus, if ALPA is entitled to calculate its members' dues by reference to their earnings, as petitioners seem to concede, General Motors has already authoritatively disposed

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9/ Petitioners agree (Pet. 5) that an agency shop arrangement is subject to the same analysis under the Railway Labor Act. See Brotherhood of Railway & Steamship Clerks v. Allen, 373 U.S. 113, n. 2 (1963).

of the question they would raise here.[10/]

Petitioners find a "constitutional" issue (Pet. 7) in that aspect of the decision below which dealt with their claims for partial rebates pursuant to International Ass'n of Machinists v. Street, 367 U.S. 740 (1961). But they fail here to articulate what that issue might be. That alone warrants denial of the petition. Rule 21(5), Rules of the Supreme Court of the United States, effective June 30, 1980.

In any event, the proceedings below make it clear that no issue, constitutional or otherwise, is

10/ The rationale of General Motors — namely, that Congressional approval of the union shop also extends to less severe union security arrangements — naturally operates to privilege such arrangements regardless of whether employees all pay an identical amount of dues or all pay an identical percentage of their earnings; in both situations, the "abuses of compulsory unionism" are eliminated yet "all employees could be required to pay their way". 373 U.S. at 740-41. For the same reason, the Court found it unnecessary to inquire, in General Motors, whether or not the union maintained different classifications or types of membership. Hence, petitioners' assertion that ALPA maintains "but a single type and category of membership" (Pet. 7) fails either to distinguish General Motors, or to identify any unsettled questions.

presented by the claims based upon Street. As shown above, when ALPA was served with the complaints containing allegations that it had expended union funds for purposes beyond the limitations imposed in Street, it paid the complaining employees specified amounts in satisfaction of any obligation stemming from Street;[11/] and the fact that these employees accepted the partial rebates, without dispute over the propriety of the amounts, was embodied in the district court's final order. Pet. 26a.

As a result, the district court correctly deemed the Street claims moot (Id.) and the court of appeals refused to consider the pertinent complaint allegations (Pet. 2a). Since the dissenting employees have already been repaid that pro rata portion of their compulsory union obligations which might arguably have been spent for "political" purposes,

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11/ ALPA did not agree that it had made any "political" expenditures, but it offered, and the employees accepted, sums calculated to satisfy the Street obligation if it applied.

there is no issue at all posed by this aspect of the case, let alone an issue warranting review by this Court.

Petitioners suggest otherwise, arguing that nonmembers, once they object to "political" expenditures by the union,

> "cannot constitutionally be required to pay more than the lowest paid member pays. Otherwise, the nonmember would be required to subsidize costs which should be borne by the members in violation of . . . Street . . ." (Pet. 12).

Contrary to petitioners' assertion, Street does not purport to restrict nonmembers' obligations to the level paid by "the lowest paid member". Under Street, the union must excuse all dissenters from support of political causes, but it remains entitled to ". . . financial support . . . relate[d] . . . to the work of the union in the realm of collective bargaining." 367 U.S. at 763.

Since petitioners have already received rebates for any arguably "political" expenditures, the only remaining costs are necessarily those in the "realm of collective bargaining". Street and its progeny

expressly compel such dissenting employees to continue sharing in the support of this remaining burden, Id. at 771; Allen, supra, 373 U.S. at 119-120; Abood v. Detroit Board of Education, 431 U.S. 209, 220-23, 237-240 (1977), and simply leave unaffected the union's authority to select any uniform and non-discriminatory method for its allocation among represented employees.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari in No. 80-861 should be denied.

Respectfully submitted,

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see 8.0

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